ORIGINAL

(3)

Supreme Court, U.S.
FILED
FEB 14 2003
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

STATE OF MARYLAND, *

Petitioner *

v. * No. 02-809

JOSEPH JERMAINE PRINGLE, *

Respondent *

* * * * * * * * * * * *

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

Respondent, Joseph Jermaine Pringle, who is indigent and who has been found to meet the qualifications for representation by the Office of the Public Defender for the State of Maryland, asks leave to proceed in *forma pauperis* pursuant to Rule 39.

Respondent's affidavit in support of this motion is attached.

Respectfully submitted,

Sherrie B. Glasser
Assistant Public Defender
Office of the Public Defender
Appellate Division
6 St. Paul Street, Suite 1302
Baltimore, MD 21202
(410) 767-8522

Counsel for Respondent

OFFICE OF THE CLERK
SUPREME COURT

B pp

IN THE
SUPREME COURT OF THE UNITED STATES

STATE OF MARYLAND *
Petitioner

*

v. **No. 02-809**

*

JOSEPH JERMAINE PRINGLE
Respondent

* * * * *

AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED IN *FORMA PAUPERIS*

I, Joseph Jermaine Pringle, being duly sworn, depose and say that I am the respondent in the above-entitled case. I swear or affirm under the penalty of perjury that, because of my poverty, I cannot pay the costs of this appeal. I further swear or affirm under the penalty of perjury that my answers to this form are true and correct.

Joseph Pringle Date: 1/30/03
Joseph Jermaine Pringle

1. Are you presently employed?

NO

(a) If the answer is *yes*, state the amount of your salary or wages per month and give the name and address of your employer.

(b) If the answer is *no*, state the date of your last employment and the amount of the salary and wages per month which you received.

NOVEMBER 1999 - $370.00 A WEEK

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment or in the form of rent payments, interest, dividends, or other source?

NO

(a) If the answer is *yes*, describe each source of income and state the amount received from each during the past twelve months.

3. Do you own any cash or checking or savings accounts?

NO

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?

NO

(a) If the answer is *yes*, describe the property and state its approximate value.

5. List the persons who are dependent on you for support and state your relationship to those persons.

NO ONE

6. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months? If yes, describe.

HOPING TO BECOME EMPLOYED

7. Have you paid – or will you be paying – an attorney any money for services in connection with this case, including the completion of this form? If yes, how much?

NO

8. Have you paid – or will you be paying – anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form? If yes, how much?

NO

9. State your address of legal residence.

2718 GILES RD BALTIMORE MD 21225

Your daytime phone number: 410-633-6131

Your age 28 Your years of schooling: GED

Your social security number: 216-84-4572

No. 02-809

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2002

STATE OF MARYLAND,

Petitioner

v.

JOSEPH JERMAINE PRINGLE,

Respondent

ON PETITION FOR WRIT OF CERTIORARI TO
THE COURT OF APPEALS OF MARYLAND

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

STEPHEN E. HARRIS
Public Defender

SHERRIE B. GLASSER*
Assistant Public Defender

Office of the Public Defender
Appellate Division
6 St. Paul Street, Suite 1302
Baltimore, Maryland 21202-1608
(410) 767-8522

*Counsel of Record

INDEX

TABLE OF CONTENTS

Page

SUMMARY OF ARGUMENT 2

STATEMENT OF THE CASE 2

REASONS FOR DENYING THE WRIT 5

CONCLUSION 9

TABLE OF CITATIONS

Cases

Brunson v. State, 940 S.W.2d 440 (Ark.), *cert. denied*, 522 U.S. 898 (1997) 8

Jackson v. State, 643 A.2d 1360 (Del.1994) 8

Mapp v. Ohio, 367 U.S. 643 (1961) 5

People v. Sutherland, 683 P.2d 1192 (Colo. 1984) 9

State v. Horton, 625 N.W.2d 362 (Iowa), *cert. denied*, 122 S.Ct. 288 (2001) 8

State v. Johnson, 682 So.2d 385 (Ala. 1996) 9

Terry v. Ohio, 392 U.S. 1 (1968) 7

United States v. Di Re, 332 U.S. 581 (1948) 2, 5, 7, 9

Wyoming v. Houghton, 526 U.S. 295 (1999) 5, 7

Ybarra v. Illinois, 444 U.S. 85 (1979) 5, 7, 9

No. 02-809

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2002

STATE OF MARYLAND,

Petitioner

v.

JOSEPH JERMAINE PRINGLE,

Respondent

ON PETITION FOR WRIT OF CERTIORARI TO
THE COURT OF APPEALS OF MARYLAND

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

SUMMARY OF ARGUMENT

Review is unwarranted because the opinion of the Court of Appeals of Maryland correctly applies this Court's decision in *United States v. Di Re*, 332 U.S. 581 (1948). Resolution of this case requires nothing more than the application of settled law to a set of facts unique to this particular case. Moreover,

contrary to Petitioner's claim, there is no conflict in the rulings of the federal and state courts as to the application of *Di Re* in cases involving the arrest of passengers.

STATEMENT OF THE CASE

Mr. Pringle was charged with the offense of possession with intent to distribute cocaine. Prior to trial he contested the legality of his arrest.

At the hearing on the Motion to Suppress held on March 23, 2000, Officer Jeffrey Snyder testified that at 3:16 a.m. on the morning of August 7, 1999, he was on routine patrol in the Reisterstown/Garrison area of Baltimore County when he conducted a traffic stop of a Nissan Maxima traveling at a high rate of speed. (Pet. App. at 2a-3a, 50a). The driver was not wearing a seat belt. The driver/registered owner was ascertained to be Donte Partlow. (Pet. App. at 3a). Respondent, Joseph Pringle, was seated in the front passenger seat and Otis Smith was seated in the rear of the vehicle. (Pet. App. at 3a). Officer Snyder noticed that when Mr. Partlow opened the glove compartment to obtain his registration, there was "a large amount of money rolled up." (Pet. App. at 3a). Officer Snyder secured Mr. Partlow's license and registration. (Pet. App. at 3a). After running a computer check, he found no outstanding violations. Mr. Partlow, who was standing outside his vehicle, was issued a verbal warning. At this time, a second police car arrived and parked directly behind Officer Snyder's car. Officer Snyder then inquired whether Mr. Partlow had any drugs or weapons in the vehicle. The

latter responded in the negative. Officer Snyder then sought, and received, permission to search Mr. Partlow's car. (Pet. App. at 3a). The two passengers were asked to exit the vehicle, patted down for weapons, and asked to be seated on the curb. (Pet. App. at 3a). The search of the vehicle revealed $763 in the glove compartment and five plastic glassine baggies containing suspected cocaine from behind an armrest in the back seat of the vehicle. Describing the location of the cocaine, the Maryland Court of Appeals noted the following:

> The armrest in the backseat was the type that goes up and down. At the time of the stop, the armrest was in the upright position and flat against the seat. When Officer Snyder pulled down the armrest he found the drugs, which had been placed between the armrest and the back seat of the car and, absent the pulling down of the armrest, were not visible. (Pet. App. at 3a-4a, fn.2).

Officer Snyder questioned each of the three men individually as to the ownership of the drugs and money. (Pet. App. at 3a-4a). He advised them that if no one admitted to ownership of the drugs, he was going to arrest them all. When the men denied knowledge of the items, they were placed under arrest and transported to the precinct. (Pet. App. at 4a).

Officer Snyder subsequently met with Mr. Pringle sometime between 4:00-4:45 a.m. (Pet. App. at 4a). Following a waiver of his Miranda rights Mr. Pringle provided an oral and written statement in which he acknowledged that the cocaine belonged to him, that he and his friends were on their way to a party in Westminster, and that he intended to sell it or "use it for sex." He maintained that

neither Mr. Partlow nor Mr. Smith knew of the drugs. (Pet. App. at 4a). Mr. Partlow and Mr. Smith were released. (Pet. App. at 4a).

Defense counsel argued that respondent's arrest was unlawful because it was not supported by probable cause, and that, as such, his statement should be suppressed as the unlawful fruit of such arrest. (Pet. App. at 4a-5a). The trial judge found that the police "had probable cause to make the arrest as he did." (Pet. App. at 5a).

On appeal, the Court of Appeals of Maryland held "that a police officer's discovery of money in a closed glove compartment and cocaine concealed behind the rear armrest of a car is insufficient to establish probable cause for an arrest of a front seat passenger, who is not the owner or person in control of the vehicle, for possession of the cocaine." (Pet. App. at 22a). Accordingly, the Court of Appeals concluded that inasmuch as there was no probable cause to arrest respondent, under the "fruit of the poisonous tree doctrine," *See Mapp v. Ohio*, 367 U.S. 643 (1961), the evidence seized could not be used against him. (Pet. App. at 23a).

REASONS FOR DENYING THE WRIT

The State maintains that the case of *Wyoming v. Houghton*, 526 U.S. 295, 297 (1999) has changed the approach by the appellate courts established in *United States v. Di Re*, 332 U.S. 581 (1948), and *Ybarra v. Illinois*, 444 U.S. 85 (1979), in evaluating probable cause to arrest. Citing *Houghton*, the State appears to

confuse the right of the police to search the contents of a vehicle and the right to arrest and search the passengers. Specifically, the State asserts that *Houghton* has "been understood as a departure" from the principles of *Di Re* and *Ybarra.* (Pet. at 9). However, in making this assertion, the State fails to cite any authority in support thereof. Indeed, a review of the State's Petition reveals it as "much ado about nothing." As such, denial of the petition is warranted.

In *Di Re*, this Court invalidated the arrest of a defendant found sitting in a car with a man who had knowingly passed counterfeit gasoline ration coupons to an informant also sitting in the car, on the ground that probable cause could not be inferred simply from the defendant's mere presence in the car. It was emphasized that the right to search the vehicle for contraband did not carry with it the concomitant right to search Di Re's person, even though he was an occupant of the car. The Court commented as follows: "We are not convinced that a person, by mere presence in a suspected car loses immunities from search of his person to which he would otherwise be entitled." *Id.*, 332 U.S. at 587.

Ybarra was a case which focused upon the propriety of the search of a patron of a tavern which was searched pursuant to a warrant. In finding that the search of Ybarra was unlawful, this Court held:

> It is true that the police possessed a warrant based on probable cause to search the tavern in which Ybarra happened to be at the time the warrant was executed. But, a person's mere propinquity to others independently suspected of criminal activity does not, without more, give rise to probable cause to search that person. ... Where the standard is probable cause, a search or seizure of a person must be supported by probable cause with respect to that person. This requirement cannot be undercut or avoided by simply pointing to the fact that coincidentally there exists probable cause to search another or to search the premises where the person may happen to be. (citation omitted). *Id.*, 444 U.S. at 91.

In contrast, the issue in *Houghton* was whether "police officers violate the Fourth Amendment when they search a passenger's *personal belongings* inside an automobile that they have probable cause to believe contains contraband." *Id.*, 526 U.S. at 297 (emphasis added). That case did not involve the search of the purse's owner. The difference between searching a person, as opposed to a container, is significant. Indeed, in *Houghton* this Court repeatedly emphasized the constitutional distinction between the two searches. *Id.* at 302-03.

In holding that all containers found within an automobile are the proper subject of a search when there is probable cause to believe that the automobile itself contains contraband, this Court in *Houghton* emphasized that it's holding was entirely consistent with *Ybarra* and *Di Re*. The Court, speaking through Justice Scalia, noted that *Ybarra* and *Di Re* "turned on the unique, significantly heightened protection afforded against searches of one's person," *Id.*, at 303, and, citing *Terry v. Ohio,* 392 U.S. 1 (1968), the Court explained why the search of a person, as opposed to an object, is granted this "heightened protection:" " 'Even a limited search of the outer clothing ... constitutes a severe, though brief, intrusion upon cherished personal security, and it must surely be an annoying, frightening,

and perhaps humiliating experience." *Houghton,* 526 U.S. at 303. Thus, because "[s]uch traumatic consequences are not to be expected when police examine an item of personal property found in a car," the Court held that the Wyoming Supreme Court had erred in relying upon *Di Re* and *Ybarra* because those cases involved searches of persons, rather than containers as in *Houghton. Id.* at 303 and n 1. See also *id.* at 308 (Breyer, J., concurring). Hence, it is abundantly clear that the Court in *Houghton* specifically distinguished between the law governing searches of persons as dealt with in *Di Re* and *Ybarra,* and the search of objects, and was not, as urged by the State in its Petition, "a departure from the principles of *Di Re* and *Ybarra.*"

Further, in attempting to create a distinction where none exists, the State seizes upon the language of *Houghton* that a car passenger "will often be engaged in a *common enterprise* with the driver and have the same interest in concealing the fruits or evidence of their wrongdoing." (emphasis added). *Id.* at 304-05. The State thus takes this language, stretches it, contorts it, and attempts to interpret it as a as a novel theory of law. The fact remains that case law continues to consistently follow the requirement that there be *some* link between a mere passenger and contraband lawfully seized from within the vehicle before such passenger can be subject to arrest. Indeed, virtually all of the cases cited by the State, purportedly to demonstrate a relaxation of the requirement of link between the passenger and the contraband, in fact do provide such link. *See i.e, State v.*

Horton, 625 N.W.2d 362 (Iowa), *cert. denied,* 122 S.Ct. 288 (2001) (proximity of passenger to contraband in plain view); *Brunson v. State,* 940 S.W.2d 440, 441 (Ark.), *cert. denied,* 522 U.S. 898 (1997) (odor of marijuana emanating from the vehicle in which the defendant was a passenger); *Jackson v. State,* 643 A.2d 1360, 1365-66 (Del.1994) (contraband in a non-secretive location within the vehicle). The State additionally cites cases, in completely irrelevant contexts, to purportedly establish that the police can arrest more than one person who is suspected of participating in an offense. *See i.e., People v. Sutherland,* 683 P.2d 1192, 1196 (Colo. 1984) (taking of blood from two individuals present in an automobile involved in an accident to ascertain the presence of alcohol in the blood); *State v. Johnson,* 682 So.2d 385, 387 (Ala. 1996) (arrest of two individuals suspected of committing a child-abuse/murder). These, and the remaining cases cited by the State utterly fail to establish any deviation from the basic, fundamental principle that the right to search a vehicle for contraband does not carry with it a concomitant right to arrest a mere passenger in the vehicle absent a link connecting such passenger to the contraband.

In conclusion, it is clear that there has been no deviation by this Court in the principles espoused in *Di Re* and *Ybarra,* nor is there a conflict between those rulings and the decision of the Court of Appeals of Maryland in this case. Inasmuch as the opinion of the Court of Appeals is consistent with this Court's prior decisions, review is not merited.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

Stephen E. Harris
Public Defender

Sherrie B. Glasser*
Assistant Public Defender

Counsel for Respondent

*Counsel of Record

February 13, 2003